

CHAPTER NO. 592

HOUSE BILL NO. 3480

By Representative McMillan and Mr. Speaker Naifeh and Representatives Fitzhugh, Head, Pinion, Shepard, Maddox, Hargrove, Shaw, Langster

Substituted for: Senate Bill No. 3418

By Senators Crutchfield, Dixon, Herron, Kilby

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4 and Chapter 6, relative to taxation.

WHEREAS, economic growth and development in Tennessee are vital components in assuring that all our citizens achieve and maintain financial prosperity; and

WHEREAS, the continued economic growth of our State and competitiveness with surrounding states requires that we continually evaluate the incentives offered to companies seeking to relocate to or expand current operations in Tennessee; and

WHEREAS, Tennessee's existing job tax incentives focus primarily on manufacturing and distribution jobs; and

WHEREAS, the mission of developing a successful economy in this State by attracting and retaining better-paid, higher-skilled jobs is essential in competing in today's global economy; and

WHEREAS, that mission dictates that the job tax incentive be expanded to include those businesses and industry that increase the number of better-paid, higher-skilled jobs and thus increasing the full employment of Tennesseans; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by adding the following as a new subdivision:

() "Economically distressed county" means:

(i) An economically distressed county as defined by the department of economic and community development; or

(ii) A county that meets one (1) of the following criteria for any month during the twenty-four (24) months immediately prior to the creation of any net new full-time employee job for which a job tax credit is sought pursuant to this subsection (c), based on monthly statistics from the department of labor and workforce development:

(a) The average number of dislocated workers in the county exceeds the average number of dislocated workers in Tennessee; or

(b) The per capita income of the county is less than Tennessee's average per capita income.

SECTION 2. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by deleting subdivision (B) in its entirety and substituting instead the following:

(B) "Qualified business enterprise" means:

(i) An enterprise in which the business has made the required capital investment necessary to permit the creation or expansion of manufacturing, warehousing and distribution, processing tangible personal property, research and development, computer services, call centers, headquarters facilities as defined in § 67-6-224(b), or convention or trade show facilities;

(ii) An enterprise in which the business has made the required capital investment necessary to permit the creation or expansion of a repair service facility primarily engaged in providing repairs for aircraft owned by unrelated commercial, governmental or foreign persons; or

(iii) An enterprise that promotes high-skill, high-wage jobs in high-technology areas, emerging occupations or skilled manufacturing jobs in which the business has made the required capital investment in an economically distressed county necessary to permit an increase in the number of net new full-time employee jobs in that county and which receives an approval from the commissioner of revenue and the commissioner of economic and community development in a manner prescribed by the department of revenue.

SECTION 3. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by deleting subdivision (B) in its entirety and substituting instead the following:

(B) If the qualified business enterprise is located in an economically distressed county, the credit allowed in subdivision (c)(2)(A) shall be four thousand five hundred dollars (\$4,500) for each net new full-time employee job.

SECTION 4. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by adding the following as subdivision (C) and by renumbering the remaining subdivisions accordingly:

(C) Notwithstanding subdivision (c)(2)(A)(iv) of this section to the contrary, if the qualified business enterprise meets the requirements of subdivision (c)(1)(B)(iii) of this section, the credit shall first apply in the tax year in which the qualified business enterprise increases net full-time employment by one (1) or more jobs, and in those subsequent fiscal years in which further net increases occur above the level of employment established when the credit was last taken.

SECTION 5. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting all of the language in subdivision (I) and substituting instead the following:

(I) Any gain not already included in the taxpayer's net earnings or loss on the sale of an asset distributed by the taxpayer to an entity or individual not otherwise subject to the tax imposed by this part, when such asset is sold within twelve (12) months of the date of distribution. Thus, in such a case, the gain for excise tax purposes is recognized by the taxpayer making the asset distribution rather than the seller. However, if the taxpayer making the asset distribution ceases to exist prior to the sale, the gain shall be reported and tax paid by the seller in accordance with § 67-4-2007(f).

SECTION 6. Tennessee Code Annotated, Section 67-4-2007, is amended by adding the following as a new subsection (f):

(f)(1) Any entity or individual not otherwise subject to the tax imposed by this part shall pay to the commissioner an excise tax equal to six and one-half percent (6.5%) of the gain from the sale of any asset if any of the following criteria is met:

(i) The entity or individual received the asset through a distribution from a taxpayer within the twelve (12) month period immediately prior to the sale and the taxpayer making the asset distribution ceased to exist prior to the sale;

(ii) The entity or individual received the asset through a merger, liquidation, or any similar transaction involving a taxpayer subject to the tax imposed by this part during the twelve (12) month period immediately prior to the sale; or

(iii) The entity or individual qualified for the exemption provided in § 67-4-2008(a)(8) during the twelve (12) month period immediately prior to the sale.

(2) Tax on such gain shall be reported and paid in accordance with § 67-4-2015; provided however, that such tax shall not apply to any person having not-for-profit status. In no event shall the gain from the sale of such asset be taxed twice as a result of the same transaction.

(3) Any entity or individual that fails to report and pay the tax as required by this subsection shall be subject to a penalty as set forth in § 67-1-804(b)(2).

SECTION 7. Tennessee Code Annotated, Section 67-4-1708, is amended by deleting subsection (c) in its entirety.

SECTION 8. Tennessee Code Annotated, Section 67-6-103(a), is amended by deleting from subdivision (1) the language "Twenty-nine and forty-three hundred seventy-nine ten-thousandths percent (29.4379%)" and substituting instead the language "Twenty-nine and thirty-seven hundred nine ten-thousandths percent (29.3709%)".

SECTION 9. Tennessee Code Annotated, Section 67-6-710(f), is amended by deleting subdivision (3) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 67-6-221, is amended by adding the following as a new subsection:

() Before making the distribution to counties and incorporated municipalities from taxes authorized by subsection (a), nine percent (9%) of the amount otherwise allocated to cities and counties shall be transmitted to the state general fund.

SECTION 11. Tennessee Code Annotated, Section 67-4-702(a), is amended by adding the following as a new subdivision:

() "Affiliated business entity" means a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership

interest or a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer.

SECTION 12. Tennessee Code Annotated, Section 67-4-702(a), is amended by deleting subdivision (18) in its entirety and substituting instead the following:

(18) "Services" means and includes every activity, function or work engaged in by a person for profit or monetary gain except as otherwise provided in this part. Services for profit or monetary gain does not include services rendered by a person for an affiliated business entity, provided that the services are accounted for as allocations of cost incurred in providing the service without any markup whatsoever. "Services" does not include sales of tangible personal property.

SECTION 13. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by deleting from subdivision (G) the language "not to exceed one (1) year" and substituting instead the language "not to exceed two (2) years" and is further amended by adding the following new sentence:

For purposes of this subdivision, "good cause" includes, but is not limited to, a determination by the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this subdivision.

SECTION 14. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by deleting from subdivision (H) the language "not to exceed one (1) year" and substituting instead the language "not to exceed two (2) years" and is further amended by adding the following new sentence:

For purposes of this subdivision, "good cause" includes, but is not limited to, a determination by the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this subdivision.

SECTION 15. Tennessee Code Annotated, Section 67-4-2008, is amended by deleting the present subdivision (a)(6)(A)(i) in its entirety and substituting instead the following:

(i) "Farming" is the growing of crops, nursery products, timber or fibers, such as cotton, for human or animal use or consumption; the keeping of horses, cattle, sheep, goats, chickens or other animals for human or animal use or consumption; or the keeping of animals that produce products, such as milk, eggs, wool or hides for human or animal use or consumption; or the leasing of the land to be used for the purposes herein described.

and is further amended by inserting the words "land and other" between "sale of" and "assets used" in subdivision (a)(6)(A)(ii) and is further amended by deleting the present subdivision (a)(10)(A) in its entirety and substituting instead the following:

(A) Any family-owned non-corporate entity where substantially all the activity of the entity is either:

(i) the production of passive investment income, or

(ii) the combination of the production of passive investment income and farming as defined in (a)(6)(A)(i).

SECTION 16. Sections 5 and 6 of this act shall take effect upon becoming a law and apply to any asset sale occurring on or after July 1, 2004, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 15, 2004



**JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES**



**JOHN S. WILDER
SPEAKER OF THE SENATE**

APPROVED this 3rd day of May 2004



PHIL BREDEBEN, GOVERNOR